

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MENTAL HYGIENE LEGAL SERVICE,

Plaintiff,

- and -

SHAWN SHORT,

Plaintiff-Intervenor,

- against -

ELIOT SPITZER, in his official capacity as Governor of the State of New York, ANDREW CUOMO, in his official capacity as Attorney General of the State of New York, MICHAEL HOGAN, in his official capacity as Commissioner of the New York State Office of Mental Health, DIANA JONES RITTER, in her official capacity as Commissioner of the New York State Office of Mental Retardation and Developmental Disabilities, and BRIAN FISCHER, in his official capacity as Commissioner of the New York State Department of Correctional Services,

Defendants.

**ANSWER TO
COMPLAINT OF
INTERVENOR**

07-CV-2935
(GEL)

Defendants ANDREW CUOMO, pro se, and MICHAEL HOGAN, by his attorney, ANDREW M. CUOMO, Attorney General of the State of New York, as and for their Answer to the Complaint of Intervenor filed October 5, 2007, in this action hereby allege as follows:

1. Admit "3", "6", "7", "11", "17", and "20".
2. Deny "8", "25", and "38".
3. Deny knowledge or information sufficient to form a belief as to "2", "28", and "33".

4. Deny "1", "13", "14", "15", "16", "18", "19", "21", "27", "29", "30", "31", "32", "34", "36," "37", "39", "40", and "41," and refer this Court to the authorities Plaintiff purports to recite for their correct context and meaning.

5. Deny "4" except admit that Plaintiff was on parole in the community for over one year and refer this Court to the provisions Plaintiff purports to recite for their correct context and meaning.

6. Deny "5" except admit that ANDREW M. CUOMO is the Attorney General of the State of New York and that MICHAEL HOGAN is the Commissioner of the New York State Office of Mental Health ("Commissioner" or "OMH").

7. Deny "9" except admit that Plaintiff worked at Dairy-Air Dairy Farm and Harvard Manufacturing.

8. Deny "10" except admit that Plaintiff was required to seek approval from his parole officer of relationships, that approval of a relationship with Amanda Milazzo was denied pending review, that the relationship was approved in 2007, and that Plaintiff and Ms. Milazzo resided together in a trailer located in Candor, New York.

9. Deny "12" except admit that Plaintiff was to be released from parole but that his supervision was continued pending a Mental Hygiene Law Article 10 probable cause hearing,

and otherwise refer this Court to the authorities Plaintiff purports to recite for their correct context and meaning.

10. Deny "22" but admit that the Case Review Team ("CRT") found that Plaintiff was a sex offender requiring civil management and otherwise refer this Court to the authorities Plaintiff purports to recite for their correct context and meaning.

11. Deny "23" but admit that on June 8, 2007, Defendant CUOMO filed a Sex Offender Civil Management Petition with the Supreme Court of the State of New York for the County of Tioga alleging that Plaintiff was a sex offender requiring civil management and refer this Court to the authorities Plaintiff purports to recite for their correct context and meaning.

12. Deny "24" but admit that the psychiatric examiner's report was appended as an exhibit to the Sex Offender Civil Management Petition.

13. Deny "26" but admit that Assistant Attorney General Geoffrey Rossi mentioned to Plaintiff's counsel that a regimen of strict and intensive supervision ("SIST") was a possible disposition of the Sex Offender Civil Management Petition.

14. In response to "35", repeat and reallege the responses made to the relevant paragraphs.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE, DEFENDANTS
ALLEGE:**

15. The Complaint fails to state a cause of action.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE, DEFENDANTS
ALLEGE:**

16. The issues of whether there is probable cause to believe Respondent is a sex offender requiring civil management, or whether Respondent can safely be maintained on parole in the community, are the subject of proceedings in State court and the State Division of Parole.

17. This Court should abstain from deciding issues pending in State court or before the State Division of Parole.

Dated: New York, New York
October 30, 2007

ANDREW M. CUOMO
Attorney General of the State
of New York
Attorney for Defendants
By:

EDWARD J. CURTIS, JR.
Assistant Attorney General
120 Broadway, 24th Floor
New York, New York 10271
Tel. (212) 416-8641
Fac. (212) 416-6075

TO:

SHEILA E. SHEA
Director, Mental Hygiene Legal
Service for the Third
Judicial Department (HOLLIE
S. LEVINE, of Counsel)
Attorney for Plaintiff-
Intervenor
State Office Building
44 Hawley Street, Room 1602
Binghamton, New York 13901-
4435
Tel. (607) 721-8440
Fac. (607) 721-8447

SIDNEY HIRSCHFELD
Director, Mental Hygiene Legal
Service for the Second
Judicial Department
(DENNIS B. FELD, of Counsel)
Attorney for Plaintiff
170 Old Country Road, Suite
500
Mineola, New York 11501
Tel. (516) 746-4373
Fac. (516) 746-4372

MARVIN BERNSTEIN
Director, Mental Hygiene Legal
Service for the First
Judicial Department
(SADIE ZEA ISHEE, of Counsel)
Attorney for Plaintiff
41 Madison Avenue, 26th Floor
New York, New York 10010
Tel. (212) 779-1734
Fac. (212) 779-7899

Docket Number 07-CV-2935 (GEL)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MENTAL HYGIENE LEGAL SERVICE,

Plaintiff,

- and -

SHAWN SHORT,

Plaintiff-Intervenor,

- against -

ELIOT SPITZER, et al.,

Defendants.

ANSWER TO COMPLAINT OF INTERVENOR

ANDREW M. CUOMO
Attorney General of the State of
New York

ATTORNEY FOR DEFENDANTS
BY: EDWARD J. CURTIS, JR.
Assistant Attorney General
120 Broadway, 24TH Floor
New York, New York 10271
(212) 416 - 8641

Personal Service of a copy of the within is admitted this

_____ day of _____ 2007
